

FICA Coverage at Kentucky Boards of Education

The Division of Social Security addressed the attendees at the recent Kentucky Association of School Board Officials at Bowling Green. The following question was discussed at that meeting.

What is the FICA tax withholding status of a County Employees Retirement System (CERS) retiree that returns to work at a board of education as a substitute teacher?

- Service performed at a board of education, in a certified position, as a substitute teacher is exempt from social security and Medicare withholding under the Commonwealth's Section 218 agreement.
- An employee whose service is not covered for social security and Medicare under the Section 218 agreement and who also is not a qualified participant in a board sponsored retirement system is generally subject to mandatory social security and Medicare taxes (full FICA) under the OBRA 90 provisions. IRS regulations, however, include rehired annuitants in the definition of a "participant" of a public retirement system. A rehired annuitant is an employee who is a former participant in a retirement system maintained by the board, who has recently retired from service with the board and who either is in retirement pay status or has reached the normal retirement age. A rehired annuitant is also an employee who has retired from service with another Kentucky political subdivision that maintains the same retirement system as the current board. Accordingly, the IRS informs us that an employee is a rehired annuitant and not subject to social security taxes (See next paragraph for Medicare status.) if they are retired, drawing a pension from CERS and performing service as a substitute teacher in a certified position. (Caution: Service performed by a CERS retiree in any classified position such as a substitute janitor or a bus driver is covered by social security and Medicare (full FICA) under the section 218 agreement.)
- Service performed by a substitute teacher, who is exempt from social security withholding under the Section 218 agreement and OBRA 90, is subject to Medicare only taxes.

Additional information is available from the Division of Social Security at 502/564-3952.

Distinguished Educator Program

The distinguished educator who is paid both the regular salary and the educator salary supplement by the home school district and who is a qualified participant in KTRS is excluded, for both wage payments, from the social security portion of the FICA tax. These wages would be subject to the Medicare portion of the FICA tax, unless the continuing employment exception applies. This guidance--provided by the IRS--is based on the premise that the educator is performing services in a KTRS position not covered under the Section 218 agreement, that KTRS is a qualified retirement system under IRC 3121(b)(7)(F) and that the home school district is the employer.

1) Are services performed in a position excluded from social security under the Section 218 agreement?

** Yes--go to question two*

2) Is the individual a qualified participant in a qualified retirement system?

** Yes--go to question three*

IRS regulations Section 31.3121(b)(7)-2 define a qualified participant as an employee who is an actual participant in KTRS and who has a total accrued benefit that is comparable to the old-age benefit from social security. KTRS has indicated that it is a qualified system, under the regulations. Generally, KTRS benefits, even without taking the distinguished educator salary supplement into consideration, exceed the old-age benefit as defined in the regulations.

3) Has the individual been performing substantial and regular service in continuous employment, for the home school district that is considered the employer, before April 1, 1986?

** Yes--do not withhold social security or Medicare.*

** No--withhold Medicare only.*

Education Rewards Program

The FICA withholding status of services performed in an employee's regular position would generally also apply to additional compensation the employee receives in that position, such as a reward payment. The FICA withholding status is based on the employee's status at the time services were performed.

1) Were the services performed in a position excluded from social security under the Section 218 agreement?

** Yes--go to question two.*

** No--Withhold social security and Medicare.*

Service performed in classified positions are covered by social security and Medicare under the Commonwealth's Section 218 agreement.

2) Was the individual a qualified participant in a qualified retirement system?

** Yes--go to question three.*

IRS regulations Section 31.3121(b)(7)-2 define a qualified participant as an employee who is or ever has been an actual participant in KTRS and who has a total accrued benefit that is comparable to the old-age benefit from social security. KTRS has indicated that it is a qualified system, under the regulations. KTRS benefits, even without taking the reward compensation into consideration, generally, exceed the old-age benefit as defined in the regulations.

** No--withhold social security and Medicare.*

3) Had the individual been performing substantial and regular service in continuous employment, for the board that is making the bonus payment, before April 1, 1986?

** Yes--do not withhold social security or Medicare.*

** No--withhold Medicare only.*